



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1158 of 2015
and
Cros.Obj. (MD) No.27 of 2017

The Branch Manager,
United India Insurance Company Ltd,
Mutt Street, 1st Floor,
Kumbakonam, Thanjavur District.

... Appellant/2nd Respondent in
CMA(MD) No.1158 of 2015

... 1st respondent in
Cros.Obj (MD) No.27 of 2017

Vs.

1.M.Xavier Jabakumar

... 1st respondent/Claimant in
CMA(MD) No.1158 of 2015 &
Cross Objector in
Cros.Obj (MD) No.27 of 2017

2.R.Nagarajan

... 2nd respondent/Respondent 1 in
CMA(MD) No.1158 of 2015 &
...2nd respondent in Cros.Obj (MD) No.27 of 2017

Prayer: CMA(MD) No.1158 of 2015 is filed under Section 173 of Motor Vehicles Act, 1988 and Cros.Obj(MD) No.27 of 2017 is filed under Order XLI Rule 22 of Civil Procedure Code, against the judgment and degree dated 10.09.2014 made in M.C.O.P No.5092 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Trichirappalli.

For Appellant
in CMA and Respondent No.1
in Cross Obj. : Mr.N.Dilip Kumar

For R 1
in CMA & Cross Appellant
in Cross Obj. : Mr.R.Saravanan

JUDGMENT

Heard the learned counsel on either side.

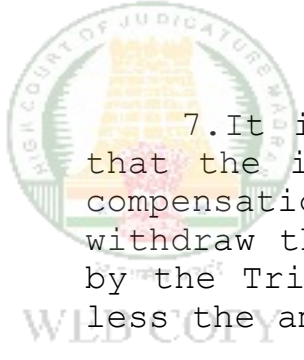
2. The insurance company has filed CMA(MD)No.1158 of 2015 questioning the award dated 10.09.2014 made in M.C.O.P No.5092 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Trichirappalli on the ground of negligence as well as the quantum. The injured claimant has also filed Cross Objection seeking enhancement.

3. The accident in question took place on 23.03.2007. The claimant was driving a lorry bearing Registration No.TN 59 E 5535. There was a head on collision involving the another lorry insured with the appellant insurance company. In the accident, the claimant suffered fractures. The Tribunal awarded a sum of Rs.3,18,100/-. The claimant had suffered partial and permanent disability to the tune of 52%. The medical cost alone was over Rs.1,21,000/-. Therefore, the award amount cannot be said to be excessive by any standard.

4. The learned counsel appearing for the appellant would contend that the claimant had also contributed to the accident. In support of the said contention, the learned counsel would rely on the F.I.R. The F.I.R shows that the claimant is the accused. But it has been consistently held by this Court that the Tribunal will have to arrive at a finding on the negligence independently and not mechanically go by F.I.R. In this case, the claimant had ultimately been acquitted by the Criminal Court. Therefore, the fact that he was initially shown as an accused pales into insignificance. Before the Tribunal, the only competent witness to be examined about the accident is the claimant himself. On the side of the insurance company only official can be examined. In the absence of any other credible material, the Tribunal chose to go by the testimony of the claimant. On that basis, it fastened the entire negligence on the driver of the other vehicle. This reasoning cannot be said to be incorrect.

5. I am therefore unable to agree with the contention of the learned counsel for the appellant insurance company that the claimant should also be fastened with contributory negligence. Since I have already held that the quantum of compensation has been correctly fixed, I find no merit in this appeal.

6. The award dated 10.09.2014 made in M.C.O.P No.5092 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Trichirappalli stands confirmed.



7.It is represented by the learned counsel for the appellant that the insurance company has already been deposited the entire compensation amount. Therefore, the claimant is permitted to withdraw the balance amount with proportionate interest as awarded by the Tribunal by filing proper application before the Tribunal, less the amount already withdrawn by him, if any.

8.The CMA(MD)No.1158 of 2015 is dismissed as well as the Cross Objection (MD)No.27 of 2017 is also dismissed. No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

To

The Special Subordinate Judge /Motor Accidents Claims Tribunal,
Trichirappalli

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No. 85729

+1CC to Mr.R.Saravanan, Advocate, SR.No. 85885

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